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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

GILA DAGAN

Plaintiff,

v.

KINGSBROOK JEWISH MEDICAL CENTER

Defendant.

COMPLAINT FOR DAMAGES

CV 13 Case No. **5688**

JURY TRIAL REQUESTED

Plaintiff, by and through her attorney, complains against Defendant, Kingsbrook Jewish Medical Center and states the following:

INTRODUCTION

1. Plaintiff brings this action to recover unpaid wages, overtime and other damages under the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (hereinafter "FLSA").
2. Plaintiff also brings her supplemental state law claim for breach of contract with the same events giving rise to her FLSA claim.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1331, by virtue of federal questions, 29 U.S.C. § 201 *et seq.* of the FLSA.
4. This Court has supplemental jurisdiction over Plaintiff's state law claims by authority of 28 U.S.C. § 1367.
5. Venue lies with this Court pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 201 *et seq.* A significant portion of the events giving rise to the instant litigation occurred at the Defendant's Hospital/Nursing home located within this district.

PARTIES

6. Defendant Kingsbrook Jewish Medical Center (hereinafter "Kingsbrook") is a New York not-for profit corporation which operates a hospital within the County of Kings, and whose principal place of business is located at 585 Schenectady Avenue, Brooklyn, New York with its registered agent being listed with the NYS Department of State at the same business address.
7. At all times material to this action, Defendant Kingsbrook was subject to the FLSA and was an "employer" of the Plaintiff, as defined by § 203(b) of the FLSA.
8. At all relevant times, Defendant Kingsbrook was an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).
9. At all relevant times, Defendant Kingsbrook had annual gross revenues in excess of \$500,000 and was subject to the requirements of FLSA.
10. Plaintiff Dagan is presently a resident of New Haven Connecticut and is otherwise sui juris.

11. At all times material to this action, Plaintiff Dagan was an “employee” within the meaning of 29 U.S.C. § 203(e).

GENERAL ALLEGATIONS

12. Plaintiff Gila Dagan worked for Defendant Kingsbrook as a Registered Nurse from about October 10, 2009 to July 31, 2013 and was paid at an hourly rate of \$38 to \$39.75 per hour. See Exhibit “A”¹ appended hereto.

13. Specifically, from about October 10, 2009 to February 13, 2013, Plaintiff regularly worked long hours – rarely took lunch breaks, had lunch break deducted from her paycheck and rarely received any overtime premium pay for hours worked in excess of 40 hours per week. Despite the fact that Plaintiff regularly worked more than 40 hours per week in a nonexempt position, Defendant knowingly paid her for only 37.5 hours of work per week and failed to pay her “GAP Wages” (i.e. hours worked below 40 hours per week) and further failed to pay her time and a half for overtime for hours worked over 40 hours per week. See Exhibit “A” appended hereto as a proforma/estimated damages calculation totaling \$160,538.00.

LEGAL CLAIMS

As And For A First Cause of Action: FAIR LABOR STANDARDS ACT (FLSA) VIOLATIONS

14. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above, and by reference repleads and incorporates them as though fully set forth herein.

1

Exhibit “A” is a proforma damages which approximates the damages owed to Plaintiff and is based upon a good faith belief and certain assumptions. The damages calculation may be revised upon receipt of discovery documents.

Failure To Pay Time Overtime Properly

15. Defendant failed to compensate Plaintiff at a rate of one and one half times the normal hourly rate for all hours over 40 worked in a workweek, in violation of the FLSA.

Willful & Not Based On Good Faith & Entitlement to Damages

16. Defendant had no good faith basis for believing that its pay practices as alleged above were in compliance with the law and knowingly underpaid the Plaintiff.

17. The foregoing conduct constitutes a “willful” violation of the FLSA, 29 U.S.C. § 255(a).

18. As a result of the violations by Defendant of the FLSA, the Plaintiff is entitled to all damages available under the FLSA which include, but are not limited to, all unpaid wages, overtime, liquidated damages, attorney’s fees, costs, and interest, as set forth in the FLSA, more specifically 29 U.S.C. § 216(b).

**As And For A Second Cause of Action:
BREACH OF CONTRACT**

19. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above, and by reference repleads and incorporates them as though fully set forth here.

20. Plaintiff and Defendant had an implied and/or actual employment contract insofar as the employment relationship is inherently contractual in nature.

21. Plaintiff agreed to perform certain job functions for Defendant, in exchange for certain compensation.

22. Specifically, Defendant agreed to pay and/or by operation of law, assumed the obligation to pay Plaintiff a certain rate of pay for *all* hours worked, and time and a half that rate of pay for hours over 40 worked in a workweek.

23. By failing to pay Plaintiff for all time worked and/or at her proper overtime rate,

Defendant breached its contract of employment with Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

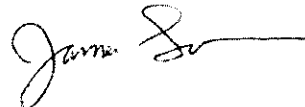
- (A) Award Plaintiff her unpaid overtime wages under FLSA (Count I);
- (B) Award Plaintiff her unpaid contractual GAP and overtime wages (Count II);
- (C) Award Plaintiff liquidated damages in the amount of her unpaid FLSA wages pursuant to 29 U.S.C. § 216(b) (Count I);
- (D) Award Plaintiff interest (Count II);
- (E) Award Plaintiff the costs of this action together with reasonable attorney's fees (Count I); and
- (F) Award such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Respectfully submitted, this 14th day of October, 2013.

LOREN LAW GROUP



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Attorney for Plaintiff

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Dagan v. Kingsbrook Jewish Medical Center
USDC, Eastern District of New York

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Complaint
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**Gila Dagan
Damages Approximation**

Pay Period Ending	Weekly Hours paid- 37.5 hours per week	Weekly Hours Worked	Weekly Unpaid Overtime Hours	Weekly Unpaid Straight Time Hours	Agreed to Hourly Rate/Regular Rate	Unpaid Overtime Totals	Unpaid Straight Time Totals	Liquidated Damages Totals	Total Damages Totals
10/17/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
10/24/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
10/31/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
11/07/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
11/14/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
11/21/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
11/28/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
12/05/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
12/12/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
12/19/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
12/26/09	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
01/02/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
01/09/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
01/16/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
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02/06/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
02/13/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
02/20/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
02/27/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
03/06/10	37.5	56.5	16.5	2.5	\$38.00	\$ 940.50	\$ 95.00	\$0.00	\$1,035.50
06/05/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
06/12/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
06/19/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
06/26/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
07/03/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
07/10/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
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07/24/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00

Gila Dagan
Damages Approximation

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07/31/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
08/07/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
08/14/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
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09/04/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
09/11/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
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10/02/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
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10/16/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$0.00	\$779.00
10/23/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
10/30/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
11/06/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
11/13/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
11/20/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
11/27/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
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12/25/10	37.5	52	12	2.5	\$38.00	\$ 684.00	\$ 95.00	\$684.00	\$1,463.00
01/01/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
01/08/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
01/15/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
01/22/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
01/29/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
02/05/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
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Gila Dagan
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07/30/11	37.5	49.5	9.5	2.5	\$38.00	\$ 541.50	\$ 95.00	\$541.50	\$1,178.00
11/05/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/12/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/19/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/26/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
12/03/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00

Gila Dagan
Damages Approximation

Pay Period Ending	Weekly Hours paid- 37.5 hours per week	Weekly Hours Worked	Weekly Unpaid Overtime Hours	Weekly Unpaid Straight Time Hours	Agreed to Hourly Rate/Regular Rate	Unpaid Overtime Totals	Unpaid Straight Time Totals	Liquidated Damages Totals	Total Damages Totals
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12/24/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
12/31/11	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
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01/28/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
02/04/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
02/11/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
02/18/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
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03/10/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
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03/31/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
04/07/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
04/14/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
04/21/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
04/28/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
05/05/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
05/12/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
05/19/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
05/26/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
06/02/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
06/09/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
06/16/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
06/23/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00

Gila Dagan
Damages Approximation

Pay Period Ending	Weekly Hours paid- 37.5 hours per week	Weekly Hours Worked	Weekly Unpaid Overtime Hours	Weekly Unpaid Straight Time Hours	Agreed to Hourly Rate/Regular Rate	Unpaid Overtime Totals	Unpaid Straight Time Totals	Liquidated Damages Totals	Total Damages Totals
06/30/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
07/07/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
07/14/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
07/21/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
07/28/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
08/04/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
08/11/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
08/18/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
08/25/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
09/01/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
09/08/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
09/15/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
09/22/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
09/29/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
10/06/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
10/13/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
10/20/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
10/27/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/03/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/10/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/17/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
11/24/12	37.5	49.5	9.5	2.5	\$39.00	\$ 555.75	\$ 97.50	\$555.75	\$1,209.00
12/01/12	37.5	42	2	2.5	\$39.00	\$ 117.00	\$ 97.50	\$117.00	\$331.50
12/08/12	37.5	42	2	2.5	\$39.00	\$ 117.00	\$ 97.50	\$117.00	\$331.50
12/15/12	37.5	42	2	2.5	\$39.00	\$ 117.00	\$ 97.50	\$117.00	\$331.50
12/22/12	37.5	42	2	2.5	\$39.00	\$ 117.00	\$ 97.50	\$117.00	\$331.50
12/29/12	37.5	42	2	2.5	\$39.00	\$ 117.00	\$ 97.50	\$117.00	\$331.50
01/05/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
01/12/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88

Gila Dagan
Damages Approximation

Pay Period Ending	Weekly Hours paid- 37.5 hours per week	Weekly Hours Worked	Weekly Unpaid Overtime Hours	Weekly Unpaid Straight Time Hours	Agreed to Hourly Rate/Regular Rate	Unpaid Overtime Totals	Unpaid Straight Time Totals	Liquidated Damages Totals	Total Damages Totals
01/19/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
01/26/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
02/02/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
02/09/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
02/16/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
02/23/13	37.5	42	2	2.5	\$39.75	\$ 119.25	\$ 99.38	\$119.25	\$337.88
*** TOTALS	1,559.0	377.5				\$ 89,718.00	\$ 14,532.50	\$ 56,287.50	\$160,538.00

Hourly rate ranged from \$38-\$39.75 during the relevant period

*** Good Faith Approximations are exclusive of sick and vacation time and include approximated reductions for maternity leave taken

*** 10/17/09-10/16/10 - Overtime and straight time claim is based on contract with no liquidated damages (Count II) - 6 year statute of limitations

*** 10/17/10-02/23/13 - Damages Claim for overtime is based on FLSA (Count I) and Contract (Count II). GAP Claim is pursuant to Contract (Count II).

*** Date ranges are approximated based on recollection in absence of payroll records

*** Straight time calculations include a claim based on lunch breaks not being taken 3-4 times per week